



# Transfer Conditions Policy

AUGUST 2019



## Contents

Transfer Conditions Policy .....	1
Background .....	3
General Principles of the Policy .....	4
Circumstances in which recognition of an awarding body is likely to be made subject to a Transfer Condition .....	5
Circumstances in which we are likely to Direct an awarding body to transfer a qualification .....	6
Identifying and supporting a recipient awarding body .....	6
Property and rights.....	7
Payments.....	8
Circumstances in which we are likely to review or revise Transfer Conditions, and the factors that are likely to be taken into account .....	8
Process for Imposing a Transfer Condition and giving a Direction in accordance with that Condition .....	9
Annex 1 - Process for Imposing a Transfer Condition and giving a Direction in accordance with that Condition.....	12

## Background

This policy is relevant to all awarding bodies that have been recognised under Section 4 (*Recognition of awarding bodies*) of the Qualifications Wales Act 2015 (“the Act”).

A “Transfer Condition” is a special condition referred to in Schedule 3 of the Act to which an awarding body’s recognition by Qualifications Wales may be subject.

Imposing a Transfer Condition allows us to direct a recognised awarding body to arrange for a qualification or form of qualification that it awards to be transferred to another awarding body. Following such a transfer the recipient awarding body would be responsible for awarding that qualification to Learners<sup>1</sup> in Wales.

---

<sup>1</sup> For the purposes of this policy, “Learner” means a person who is seeking to obtain, or who might reasonably be expected to obtain, qualifications.

## General Principles of the Policy

1. As the regulator of recognised awarding bodies in Wales, Qualifications Wales (“we”) expect awarding bodies to be responsible for their Learners and therefore manage and mitigate any risks accordingly. If these expectations cannot be met, then we will consider what regulatory action we might take, including the imposition of a Transfer Condition.
2. A Transfer Condition is a special condition requiring an awarding body, on the occurrence of a specified event, and on being directed to do so, to transfer a qualification to another awarding body.
3. This policy applies to Approved and Designated qualifications only and not to Other Regulated qualifications.
4. A Transfer Condition would apply to a qualification offered by an awarding body recognised by us and for Learners in Wales. If we are proposing to impose a Transfer Condition, then we would consider the impact of such a regulatory action on the provision of that qualification in countries elsewhere within the United Kingdom.
5. A Transfer Condition is one course of action amongst a suite of powers available to us and this policy should be read in conjunction with our [Regulatory Framework and Approach](#), which sets out our approach to regulating. We are a risk-based regulator and our approach is guided by the principle of regulating in a proportionate, transparent and targeted way. Therefore, in determining whether to direct an awarding body to transfer a qualification, we will consider all potential regulatory actions, as well as a combination of actions, in line with our [Taking Action When Things Go Wrong Policy](#).
6. If we were to direct an awarding body to transfer a qualification, then this would be following the occurrence of an event specified in the Transfer Condition where a significant adverse effect on Learners is likely to occur.
7. We envisage that a Transfer Condition would be considered in situations where Learners will not be given the opportunity to, or are unlikely to, be awarded their qualification through no fault of their own, and where awarding bodies within the qualifications system cannot find a non-regulatory solution that we deem to be appropriate at that time.

## Circumstances in which recognition of an awarding body is likely to be made subject to a Transfer Condition

8. This section of the policy sets out circumstances in which an awarding body's recognition would be likely to be made subject to a Transfer Condition, as required by Section 47(2)(a) of the Qualifications Wales Act 2015.
9. A Transfer Condition would be imposed in circumstances where we consider there to be the possibility of a **significant** adverse effect on Learners. These are likely to include, but would not be limited to, circumstances where Learners may be prevented from obtaining, completing or being awarded a qualification.
10. We are able to impose a Transfer Condition on awarding bodies we recognise. Where we impose a Transfer Condition on such an awarding body, their ongoing recognition is made subject to that condition.
11. When considering a Transfer Condition, we will take into account a number of factors, including, but not limited to the following:
  - i. whether the awarding body is affected by fire, flood, IT incidents, and Acts of God; and
  - ii. whether the awarding body has failed to implement contingency plans, action plans or withdrawal plans sufficiently and there is a subsequent risk of a significant adverse effect on Learners;
  - iii. whether the awarding body has been the subject of multiple regulatory actions (whether in Wales or elsewhere, where applicable to Wales);
  - iv. whether the awarding body is facing financial difficulties;
  - v. whether the awarding body has insufficient employee resources for whatever reason;
  - vi. whether the awarding body undertakes a structural change and/or a change in control within the organisation that affects the awarding body's delivery and/or awarding of qualifications to Learners;
12. If we impose a Transfer Condition, we will do so in writing to the Responsible Officer of the relevant awarding body. We will specify an event that, if it were to occur, we believe would be likely to have a significant adverse effect on Learners. Such events would be identified and described on a case by case basis.
13. As an evidence-based regulator, we will draw upon numerous sources of evidence in order to identify a potential significant adverse effect on Learners. These include, but are not limited to, information received in the course of our regulatory activities, intelligence gathered through complaints or disclosures or received directly from an awarding body via incident reporting or other means.

## **Circumstances in which we are likely to Direct an awarding body to transfer a qualification**

14. Once a Transfer Condition has been imposed on an awarding body, and once the event specified in that Condition has occurred, we can Direct that awarding body to transfer a qualification.
15. Therefore, the circumstances in which a Direction is likely to be given to an awarding body are those where we are satisfied that the event specified in the Transfer Condition has occurred and that therefore a significant adverse effect on Learners is likely to occur.
16. Where an event has occurred, we will take into account the awarding body's capacity and ability to mitigate or correct the risk of significant adverse effect on Learners.
17. We would normally consider undertakings, contingency plans, action plans or withdrawal plans at this time. Where the awarding body is implementing these plans fully and sufficiently managing the risks, we are less likely to direct at that stage. However, failure to put appropriate plans in place or implement them sufficiently would most likely result in us taking regulatory action, including Directing that awarding body to transfer the relevant qualification to ensure that Learners can be awarded that qualification by another awarding body.
18. Similarly, where there are market solutions available to Learners, or where awarding bodies work together voluntarily to protect the interests of Learners (such as to ensure that they are awarded the qualification), we may not need to take regulatory action.

## **Identifying and supporting a recipient awarding body**

19. As part of the process of transferring a qualification, we anticipate that we would need to undertake work to identify potential recipients for the transferred qualification. This work will be informed by our knowledge of the qualifications market.
20. In identifying a recipient awarding body, our considerations will include:
  - i. whether the awarding body has relevant expertise in delivering similar qualifications and assessments, has the relevant knowledge and capacity, and where necessary, can offer Welsh medium qualifications;
  - ii. whether the awarding body has a sufficient track record of compliance with our regulatory requirements; and

- iii. whether the awarding body has demonstrated its ability to identify and manage risks effectively.
21. In order to identify appropriate and interested awarding bodies, it may also be necessary for us to share information. We will endeavour to keep the information we share to a minimum and at a sufficient level to carry out our functions appropriately. Our guiding principle throughout will be to protect Learners.
  22. We will aim to fully support an awarding body that receives the transferred qualification, and this might include providing financial support, where possible and appropriate for us to do so.

## **Property and rights**

23. Any Direction given in accordance with a Transfer Condition may include the transfer of relevant property and rights to the recipient awarding body.
24. The term “property and rights” is not defined within the Act, and accordingly, the words should be taken to be interpreted according to their normal usage, which means that all kinds of property and rights are included, and capable of being included within a Direction.
25. However, a Direction can only be given in order to secure that a form of qualification which is, or has been awarded by a body, may be awarded by another body in the future. With this in mind, it is appropriate that only “property and rights” relating to the qualification in question are relevant.
26. “Property and rights” which might need to be transferred to enable another Awarding Body to deliver a qualification will vary on a case-by-case basis, but could include assessment materials, intellectual property related to that qualification, or access rights to relevant data and information.
27. Where there is shared ownership of a qualification or the awarding body has contractual arrangements regarding property and rights of that qualification, we will take this into account when considering what regulatory action is appropriate to take.

## Payments

28. The Act makes provision for payments to be made to an awarding body specifically in relation to a loss sustained as a result of complying with our Direction to transfer a qualification. The use of this power should not be viewed as rewarding non-compliance, but rather, as an attempt to reduce or mitigate negative impact on that awarding body's ability to award other qualifications to Learners in Wales that arises as a result of complying with the Direction.
29. The matters we are likely to take into account when determining whether to make a payment to an awarding body, and the amount of any such payment include, but are not limited to, the following:
  - i. the awarding body's ability to deliver and award other qualifications it offers to Learners in Wales; and
  - ii. the risk of adverse effect on Learners and on public confidence in the Welsh qualification system.

## **Circumstances in which we are likely to review or revise Transfer Conditions, and the factors that are likely to be taken into account**

30. A Transfer Condition may not have a specified date of expiry. However, if we have given a Direction in accordance with that Condition and the awarding body has satisfactorily complied with that Direction, on occasions, we will review or revise the Transfer Condition when it is timely and appropriate to do so.
31. In reviewing or revising a Transfer Condition, the factors that we are likely to take into account would include, but are not limited to, the following:
  - i. whether the awarding body has complied with the Direction given by us to a satisfactory degree;
  - ii. whether the reasonable needs of Learners have been met; and
  - iii. whether there remains a risk of a significant adverse effect on Learners.
32. A review may find that requirements outlined in the Transfer Condition have been concluded to our satisfaction and it is no longer appropriate for the awarding body's ongoing recognition to be subject to it. In such circumstances, we would write to the awarding body to confirm this. However, it is important to note that the removal of a Transfer Condition does not mean the qualification is returned to the awarding body.

33. We can impose a Special Condition on the awarding body to prohibit them from the development, delivery and/ or award of the same or similar qualification. We would keep this under review and would do so in order to promote confidence in the qualification system and/ or to protect learners.

## **Process for Imposing a Transfer Condition and giving a Direction in accordance with that Condition**

34. The following section outlines the process we will take in imposing a Transfer Condition on an awarding body, and subsequently giving a Direction in accordance with that Condition, where appropriate. This is a two-stage process, as outlined in the Act. Please see Annex 1 for an illustrative diagram of this process.

### **Stage 1 – Notice of Intent to impose a Transfer Condition**

35. Where we have identified a risk of a significant adverse effect on Learners and decided to impose a Transfer Condition, we will provide the awarding body with a Notice of Intent. This Notice will specify:

- i. the reasons for proposing to impose this condition, including reference to any evidence that we have gathered;
- ii. the proposed subject matter of the Transfer Condition, including;
  - the qualification to which it refers;
  - that the awarding body’s recognition will be subject to the Transfer Condition, and
  - a description of an event, the occurrence of which will lead to us giving a Direction in accordance with that Condition,
- iii. a period within which the awarding body can make representations, and
- iv. a period within which we will decide whether to impose the proposed Transfer Condition.

### **Stage 2 - Representations**

36. Following receipt of the Notice of Intent, the awarding body will have a period of **15 working days** to make representations to us.

37. In exceptional circumstances, where we identify an immediate risk of a significant adverse effect on Learners, we may specify a shorter period in which an awarding body may make representations and will include our rationale for doing so in our Notice of Intent.

38. We will consider any representations received and then decide whether to proceed.

### Stage 3 – Impose a Transfer Condition

39. If appropriate, we will impose a Transfer Condition to which the awarding body's recognition will be subject. This document will include:
- i. the subject matter of the Transfer Condition, as detailed in the Notice of Intent, subject to any amendments made as the result of representations; and
  - ii. the date from which the awarding body's recognition will be subject to this Transfer Condition.
40. After imposing a Transfer Condition, we will continue to monitor the awarding body's activities. This condition will specify that, on the occurrence of a specified event, we may direct an awarding body to transfer a qualification. We will not direct an awarding body unless we are satisfied that the event specified in the Transfer Condition has occurred.

### Stage 4 - Notice of Intent to Give a Direction

41. If the event specified in the Transfer Condition occurs, we can give a Direction. This is a regulatory action, and the awarding body must comply with any Direction in order to remain recognised by us.
42. If we decide to give a Direction to an awarding body, we will give the awarding body a Notice of our Intent to do so. This Notice will specify:
- i. the proposed Direction to be given;
  - ii. the reasons for proposing to give this Direction; and
  - iii. a period within which we will decide whether to give the proposed Direction.

### Stage 5 – Representations

43. An awarding body that receives a Notice of our Intent to give a Direction may:
- i. submit representations to us which we must receive within a period of **three working days** from the date of the Notice; or
  - ii. do nothing, in which case, we will normally wait until the period in the notice has expired, and then proceed.

## Stage 6 – Giving a Direction

44. We will consider any representations made by the awarding body if received within the time frame outlined in Stage 5 above.
45. If we decide to give a Direction, it is likely to include the following:
  - i. grounds for giving the Direction;
  - ii. the subject matter of the Direction, which is likely to include;
    - the qualification to which the Direction refers;
    - any relevant property or rights, to be transferred to a receiving awarding body for that body to award that qualification;
    - the timeframe of the transfer to enable the current cohort of Learners to complete the qualification to which the notice refers;
    - the date by which, in the absence of a request for an independent review, the proposed Direction is to come into effect;
    - provision for the making of payments, if necessary.
  - iii. consequences of non-compliance with the Direction, including the potential withdrawal of recognition; and
  - iv. the awarding body's right to request a review of our decision to give a Direction, signposting to our Regulatory appeals policy.
46. This Direction will usually be published on our website.
47. Any awarding body that is given a Direction can make a regulatory appeal against our decision in line with our [Regulatory Appeals Policy](#).
48. When requesting an appeal, the awarding body should write to the Head of Corporate Governance at [corporategovernance@qualificationswales.org](mailto:corporategovernance@qualificationswales.org) or write to us at:

Qualifications Wales  
Q2 Building  
Pencarn Lane  
Imperial Park  
Coedkernew  
Newport  
NP10 8AR

## Annex 1 - Process for Imposing a Transfer Condition and giving a Direction in accordance with that Condition

